Supreme Court, U.S.
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No. 04-1672

In the Supreme Court of the United States

RYAN'S FAMILY STEAK HOUSES, INC.,
Petitioner,

v.

ERRIC WALKER, on behalf of himself and all others similarly situated; STEVE RICKETTS, on behalf of himself and all others similarly situated; VICKIE ATCHLEY, on behalf of herself and all others similarly situated,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

Table of Contents i

Table of Authorities ii

Petitioner's Supplemental Brief 1

Conclusion 2

TABLE OF AUTHORITIES

Cases

American Heritage Life Ins. Co. v. Orr,
294 F.3d 702 (5th Cir. 2002) 2

Caley v. Gulfstream Aerospace Corp.,
___ F.3d ___, No. 04-14463,
2005 WL 2840372 (11th Cir. Oct. 31, 2005) 1, 2

Koveleskie v. SBC Capital Mkts., Inc.,
167 F.3d 361 (7th Cir. 1991) 2

Prudential Ins. Co. of Am. v. Lai,
42 F.3d 1299 (9th Cir. 1994) 1, 2

Syndor v. Conseco Fin. Servs. Corp.,
252 F.3d 302 (4th Cir. 2001) 2

Walker v. Ryan's Family Steak Houses, Inc.,
400 F.3d 370 (6th Cir. 2005) 1, 2

Statute

9 U.S.C. §§ 1 *et seq* 2

PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner, Ryan's Family Steak Houses, Inc. (hereinafter "Ryan's"), respectfully submits the following supplemental brief in support of its petition for a writ of certiorari pursuant to Supreme Court Rule 15(8). Ryan's makes this supplemental filing in order to make the Court aware of the Eleventh Circuit's recent decision in *Caley v. Gulfstream Aerospace Corp.*, ___ F.3d ___, No. 04-14463, 2005 WL 2840372 (11th Cir. Oct. 31, 2005).

The *Caley* case is important because it further amplifies the distinct split which currently exists among the United States Courts of Appeal with respect to the application of the heightened knowing and voluntary waiver standard when scrutinizing arbitration agreements.[1] In opposing review by this Court, the Respondents erroneously maintain that no such split exists. As *Caley* makes clear, that position is without merit.

In *Caley*, the Eleventh Circuit affirmed the district court's grant of a motion to compel arbitration in part by rejecting the plaintiffs' argument that their employer failed to secure their knowing and voluntary waiver of their right to a jury trial when promulgating the company's pre-dispute arbitration program. *Id.* at ** 8-9. The Eleventh Circuit found this

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[1] The Sixth Circuit below invalidated the Ryan's arbitration program on a nationwide basis by holding, *inter alia*, that Ryan's failed to demonstrate it procured a "knowing and voluntary" waiver of its employees' right to a jury trial on their statutory employment claims when they executed the arbitration agreements at issue. *Walker v. Ryan's Family Steak Houses, Inc.*, 400 F.3d 370,381 (6th Cir. 2005). This heightened standard emanates from *Prudential Ins. Co. of Am. v. Lai*, 42 F.3d 1299, 1305 (9th Cir. 1994).

standard to be irreconcilable with the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and noted its rejection was in accord with decisions out of the Fifth, Fourth and Seventh Circuits, *Id.* (citing *American Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 711 (5th Cir. 2002); *Syndor v. Conseco Fin. Servs. Corp.*, 252 F.3d 302, 307 (4th Cir. 2001); *Koveleskie v. SBC Capital Mkts., Inc.*, 167 F.3d 361, 368 (7th Cir. 1991)), but acknowledged it was in direct conflict with the very Sixth Circuit decision from which Ryan's seeks review by this Court. *Id.* at n.14 (citing *Walker*, 400 F.3d at 381 (6th Cir. 2005)).[2]

The division among the circuits could not be more clear as this latest opinion from the Eleventh Circuit demonstrates.

CONCLUSION

Ryan's petition for writ of certiorari should be granted.

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[2] The Eleventh Circuit additionally noted the Ninth Circuit also adopted this heightened standard. *Id.* (citing *Lai*, 42 F.3d at 1305 (9th Cir. 1994)).